

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JILL A. WHITCOMB,

Plaintiff,

v.

Case No. 17-CV-14

ALEX AZAR,
Secretary of the U.S. Department of Health
and Social Services,

Defendant.

NOTICE OF SUBSEQUENT AUTHORITY

Plaintiff Jill A. Whitcomb files this notice of subsequent authority to bring to the Court's attention decisions issued by the Medicare Appeals Council on May 11, 2018, and May 18, 2018. *See In re: N.S.*, M-17-8596 (May 11, 2018) (Exhibit #1 at 2) and *In re: J.B.*, M-18-1749 (May 18, 2018) (Exhibit #2 at 10). As shown there, the Secretary continues to deny CGM claims on the grounds that a CGM is "precautionary" even with full knowledge of this Court's decision finding that position "unreasonable" and "arbitrary and capricious." Thus, more than 6 months after this Court's decision, the Secretary continues to deny CGM coverage based on the claim that a CGM is not "primarily and customarily used for a medical purpose."

As noted in Ms. Whitcomb's opening papers on fees, one purpose of an EAJA award is to deter the government from advancing unreasonable positions. *See* Dkt. #28 at 4. The Secretary's continued defiance demonstrates that an EAJA award in this case is necessary to potentially deter the Secretary.

Date: June 5, 2018

Respectfully submitted,

PARRISH LAW OFFICES
Attorneys for Plaintiff

/s/ Debra Parrish

By: Debra Parrish
By: James Pistorino
788 Washington Road
Pittsburgh, PA 15228
TEL 412-561-6250
FAX 412-561-6253
Email Debbie@dparrishlaw.com
Email James@dparrishlaw.com

MCNALLY PETERSON, S.C.
Attorneys for Plaintiff

/s/ Robert Theine Pledl

By: Robert Theine Pledl
1233 North Mayfair Road - Suite 200
Milwaukee, WI 53226
TEL 414-257-3399
FAX 414-257-3223
Email rpledl@mcpetelaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 5, 2018, I electronically filed Plaintiff's NOTICE OF SUBSEQUENT AUTHORITY using the Eastern District of Wisconsin ECF system which will automatically send email notification of such filing to counsel of record for Defendant:

Date: June 5, 2018

/s/ Robert Theine Pledl

Robert Theine Pledl